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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/884,816	06/18/2001	W. Reed Hastings	56055-0013	5101
29989	7590	02/27/2006	EXAMINER	
HICKMAN PALERMO TRUONG & BECKER, LLP			ZURITA, JAMES H	
2055 GATEWAY PLACE			ART UNIT	PAPER NUMBER
SUITE 550				
SAN JOSE, CA 95110			3625	

DATE MAILED: 02/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/884,816	HASTINGS ET AL.	
	Examiner	Art Unit	
	James H. Zurita	3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 10 November 2005.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,4-6,8-13,16-18,20-24,28,31-33,35-38 and 42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,4-6,8-13,16-18,20-24,28,31-33,35-38 and 42 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

Prosecution History

On 18 June 2001, applicant filed the instant application, which is a continuation in part of 09/561041, filed 28 April 2000, now US Patent 6,584,450. The instant application claims priority from provisional application 60/212193, filed on 16 June 2000, and from provisional application 60/244793, filed on 31 October 2000.

On 5 October 2004, the Examiner mailed an Election/Restriction Requirement.

On 19 October 2004, applicants elected claims 1-24 and 28-41 for prosecution.

On 8 November 2004, the Examiner issued a first Office Action, rejecting elected claims 1-24 and 28-41. Claims 25-27 were withdrawn from consideration.

On 14 February 2005, applicant filed a response to the first Office Action.

On 30 August 2005, in a final rejection, the Examiner rejected claims 1-24 and 28-41 under 35 U.S.C. 102(e) as anticipated by Chislenko (US 6,041,311).

On 10 November 2005, applicant requested continued examination.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Applicant's submission filed on 10 November 2005 has been entered.

Response to Amendment

On 10 November 2005, applicant amended claims 1, 8, 13, 20, 28 and 35.

Applicant cancelled claims 7, 19, 25-27 and 34. To date, claims 2-3, 7, 14-15, 19, 25-27, 29-30, 34 and 39-41 have been cancelled.

Claims 1, 4-6, 8-13, 16-18, 20-24, 28, 31-33, 35-38 and 42 are pending in this application and will be examined. Of these, claims 1, 13 and 28 are independent.

Response to Arguments

Applicant's arguments filed 10 November 2005 have been fully considered.

Applicant argues that the third step of claim 1 (formerly claim 7, now cancelled), is not disclosed and that there is no teaching in Chislenko of predicting how a user would rate an item by

...comparing the ratings made by the neighboring users for the items used to select the neighboring users to the ratings made by the neighboring users for the item to be recommended.

In response to this argument, the Examiner notes that amended claim 1, in relevant part, reads:

by comparing the ratings given by the one or more other users to the one or more items to ratings given by the one or more other users to the item that the user has not yet rated.

Applicant also argues:

...In *Chislenko*, ratings given to items by a user are first correlated to ratings given to the items by other users to select a set of neighboring users. [citation omitted] Once the set of neighboring users has been selected, ratings made by the neighboring users for just the item to be recommended are then used to predict how the user would rate the item. ... Rather, only the ratings made by the neighboring users for the item to be recommended are considered to predict how the user would rate the item.

Applicant cites a 4-line portion of Chislenko to conclude:

At first glance, this portion of *Chislenko* might be understood to mean that *Chislenko* teaches using the ratings given by the neighboring users to the items used to select the neighboring users in estimating how the user would rate an item. It is respectfully submitted, however, that when read in conjunction with the rest of *Chislenko*, specifically the text at **Col. 9, lines 27-48**, the phrase "ratings given to items by the neighboring users" refers to ratings given to items to be recommended, not items used to select the neighboring users.

The Examiner respectfully disagrees and notes that Chislenko discloses various embodiments. When read as a whole, Chislenko discloses the third limitation of claim 1, directed to comparing two ratings, as claimed:

by comparing

- [a] the ratings given by the one or more other users to the one or more items to
- [b] ratings given by the one or more other users to the item that the user has not yet rated.

Therefore, applicant's arguments are not persuasive.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 4-6, 8-13, 16-18, 20-24, 28, 31-33, 35-38 and 42 are rejected under 35 U.S.C. 102(e) as being anticipated by Chislenko U.S. Patent Number 6,041,311.

As per claim 1. Chislenko discloses a computer-implemented method for estimating how a user would rate an item that the user has not yet rated, the method comprising the steps of:

- (a) In a computer system, identifying one or more items that

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- have been rated favorably by a user [See, for example, at least Col. 3, lines 38-57, "Each user profile associates items with the ratings given to those items by the user." For favorable ratings, see at least Col. 8, lines 19-35 and Col. 4, lines 40-55, concerning indications that a user likes a page, for example]; and
- have ratings that satisfy a minimum rating threshold. See, for example, at least references to thresholds used to calculate similarity factors between users, as in Col. 7, lines 40-65.

(b) In a computer system, identifying one or more other users that have rated the one or more items (Chislenko: Col. 4, lines 56-65, "Each item profile records how particular users have rated this particular item.") and given ratings to the one or more items that are substantially similar to ratings given by the user to the one or more items (Chislenko: Col. 2, lines 40-54); and

(c) In a computer system, estimating how the user would rate the item that the user has not yet rated [*old: based upon how the one or more other users rated the item*] (Chislenko: Col. 2, lines 20-30: "The ratings given to items by the neighboring users as well as the weights assigned to those neighboring users are then used to predict ratings and to make recommendations of items that the user has not yet rated.")

by comparing the ratings given by the one or more other users to the one or more items to ratings given by the one or more other users to the item that the user has not yet rated, (Chislenko: Col. 2, lines 20-30, Col. 7, lines 13-28).

As per claim 4. Chislenko further discloses a method wherein the step of identifying one or more other users that have rated the one or more items and given

ratings to the one or more items that are substantially similar to ratings given by the user to the one or more item includes identifying one or more other users that have rated the one or more items and given ratings to the one or more items that are within a specified amount of ratings given by the user to the one or more items (Chislenko: Col. 9, line 62 to Col. 10, line 6).

As per claim 6. Chislenko further discloses a method wherein the step of identifying one or more other users that have rated the one or more items and given ratings to the one or more items that are within a specified amount of ratings given by the user to the one or more items includes determining whether an average of the ratings given by the one or more other users to the one or more items is within a specified amount of an average of the ratings given by the user to the one or more items (Chislenko: Col. 7, lines 13-28).

As per claim 8. Chislenko further discloses a method wherein the step of comparing the ratings given by the one or more other users to the one or more items to ratings given by the one or more other users to the item that the user has not yet rated includes comparing an average of the ratings given by the one or more other users to the one or more items to ratings given by the one or more other users to the item that the user has not yet rated (Chislenko: Col. 7, lines 13-28).

As per claim 9, Chislenko further discloses a method wherein the item is a movie and the one or more items are one or more movies (Chislenko: Col. 3, lines 5-15). The Examiner again notes that even though Chislenko discloses a method according to claim 9 as indicated *supra*, data identifying a particular item type is not

functionally related to the substrate of the method. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1391, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

As per claim 10. Chislenko further discloses a method wherein the item is a game and the one or more items are one or more games (Chislenko: Col. 3, lines 5-15).

Even though Chislenko discloses a method according to claim 10 as indicated *supra*, the Examiner notes, data identifying a particular item type is not functionally related to the substrate of the method. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1391, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

As per claim 11, Chislenko discloses a method wherein the item is a rental item (Chislenko: Col. 3, lines 5-15).

As per claim 12, Chislenko further discloses a method wherein the number of items in the one or more items is at least a specified number of -items (Chislenko: Col. 10, lines 15-31).

Claims 13, 16-18, 20-24 are rejected under the same rationale set forth for claims 1, 4-12.

Claims 28, 31-33, 35-38, 42 are rejected under the same rationale as set forth above in claims 1, 4-6, 8-12.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James H. Zurita whose telephone number is 571-272-6766. The examiner can normally be reached on 8a-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins can be reached on 571-272-7159. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**James Zurita
Patent Examiner
Art Unit 3625
20 February 2006**

*James Zurita
Patent Examiner*